

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96813

September 23, 2011

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

**DENIAL OF REQUEST FOR A CONTESTED CASE HEARING FOR MR. LEE W.
WILLIAM REGARDING AHU O LAKA ADMINISTRATIVE INFRACTION
CITATION ISSUED ON JULY 4, 2011**

The petitioner, Lee W. William, through his attorney Melodie Aduja, requested a contested case hearing concerning an administrative citation that was issued to him on July 4, 2011, for allegedly possessing alcohol in the safety zone located in Kaneohe Bay, Oahu, at Ahu O Laka or otherwise commonly known as the sand bar, in violation of an emergency rule, section 13-256-73.13, Hawaii Administrative Rules.

BACKGROUND

Hawaii Administrative Rules (HAR) section 13-256-73.13 is an emergency rule adopted by the Board at its June 23, 2011 meeting, and signed and filed with the Office of the Lieutenant Governor on the same date. A legal notice of the emergency rule was published on June 28, 2011 in the Honolulu Star-Advertiser. Shortly thereafter, copies of the adopted rule were posted at the Heeia Kea Small Boat Harbor, the Kaneohe Yacht Club, and the Kaneohe Marine Air Corps Station. Progress in the adoption and enforcement of the new rule was followed closely in the local media with stories on the emergency rule appearing as early as June 21, 2011, with extensive coverage in both print media and on television.

The first three-day weekend involving a state holiday after the emergency rule took effect was the 2011 Fourth of July weekend (July 2, 3, and 4), with the final day being a Monday. The safety zone is delineated by six (6) white/orange cylindrical-shaped buoys which indicate the zone H-2 Ahu O Laka safety zone.

On or about 1:10 p.m., Monday, July 4, 2011, Lee William was cited for a single count of consuming, using, or possessing alcohol within Zone H-2 (Ahu O Laka safety zone), thereby committing an administrative infraction in violation of HAR section 13-256-73.13(b)(1). The alleged violator was observed in possession of alcohol by Division of Conservation and Resources Enforcement (DOCARE) officer(s) under the following circumstances:

According to the officer, William was spotted along with several others on a silver pontoon-type boat within the safety zone, anchored on the sandbar. William was holding a clear bottle labeled "Jim Beam" that contained an apparent alcoholic beverage. GPS coordinates were taken of the location of the violation. William also later agreed to open his coolers aboard his vessel. An unopened "Corona" beer bottle was also observed along with the Jim Beam bottle. Also within plain view was a blue cup on the seat of the vessel containing an alcoholic beverage. All three items were recovered into evidence.

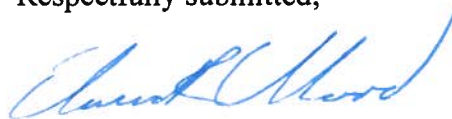
At the August 12, 2011 Land Board meeting, the Board imposed an administrative fine of two hundred dollars on Mr. William for possession of alcohol based on the facts that were presented. Prior to the meeting, Ms. Aduja sent a letter requesting a contested case hearing. Toward the end of the meeting, Ms. Aduja stated that (her client) was waiving his right to a contested case.

On August 25, 2011, the Chair's office received a petition for a contested case from Ms. Aduja on behalf of Lee William, in an apparent change of heart. Because Ms. Aduja waived the prior request for a contested case before the board and failed to submit the written petition within ten calendar days after the close of the August 12, 2011 board meeting as required by section 13-1-29, HAR, we are recommending that the request for a contested case hearing be denied.

RECOMMENDATION

That the Board deny the petition for a contested case hearing filed by Lee W. William due to the untimely submittal of a written petition for a contested case hearing.

Respectfully submitted,



Edward R. Underwood
Administrator

APPROVED FOR SUBMITTAL:



William J. Aila, Jr.
Chairperson and Member